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82-1628

No.

IN THE

Supreme Court of the United States

October Term, 1982

In re BRANIFF AIRWAYS, INCORPORATED, *et al.*,
Debtors.

AMERICAN AIRLINES, INC.,
Petitioner,

vs.

BRANIFF AIRWAYS, INCORPORATED, *et al.*,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

RONALD S. ORR,
ROBERT FORGNONE,*
BENNETT L. SILVERMAN,
DAVID H. KENNEDY,
GIBSON, DUNN & CRUTCHER,
333 South Grand Avenue,
Los Angeles, Calif. 90071,
(213) 229-7000,
and
STEPHEN L. TAYLOR,
Post Office Box 61616,
Dallas/Fort Worth Airport,
Texas 75261,
(817) 355-1262,
Attorneys for Petitioner,
American Airlines, Inc.
**Counsel of Record.*

Parker & Son, Inc., Law Printers, Los Angeles. Phone 724-6622

Questions Presented.

1. Do the United States District Courts, after entry of the judgment in *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, ___ U.S. ___, 102 S.Ct. 2858 (1982), have jurisdiction over all cases and proceedings commenced under Title 11 of the United States Code?

2. May a United States District Court, by local rule or by specific order, validly refer an entire bankruptcy case to a bankruptcy judge and delegate thereto authority to enter final orders and judgments?

3. May non-Article III judges constitutionally enter final orders and judgments in proceedings which involve the adjudication of rights created under state law and of congressionally-created rights not public in nature?

List of Parties.

Petitioner is American Airlines, Inc., a Delaware corporation with its principal place of business in Texas. American Airlines, Inc. is a wholly-owned subsidiary of AMR Corporation, a Delaware corporation. The following are affiliates of American Airlines: AA Development Corporation; AA Energy Corporation, American Airlines Training Corporation, and Flagship International, Inc.

In addition to the Petitioner, Braniff Airways, Incorporated, and the Civil Aeronautics Board were parties to the proceeding below. It should be noted, however, that Pacific Southwest Airlines, Inc., filed a brief in the Court of Appeals in which it identified itself as an appellee even though Petitioner believes it was not a party to the proceeding in the District Court and Bankruptcy Court with respect to the issues presented by this Petition. Petitioner also is serving certain other participants in the Braniff Chapter 11 case, although Petitioner believes such participants were not parties to the proceedings below with respect to the issues presented by this Petition.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

OPINIONS BELOW.

The Decision of the Court of Appeals dated February 28, 1983, not yet reported, appears in Appendix A. The Order of the United States District Court for the Northern District of Texas dated January 14, 1983, not yet reported, appears in Appendix B, and the Memorandum Opinion dated January 20, 1983, reported at *In re Braniff Airways, Inc.*, 10 Bankr. Ct. Dec. 30 (N.D. Texas 1982), appears in Appendix C. The Order of the District Court dated January 21, 1983, not reported, appears in Appendix D, and the Order of the Bankruptcy Court dated January 15, 1983, not reported, appears in Appendix E.

STATEMENT OF JURISDICTION.

The Order of the Court of Appeals was entered on February 28, 1983. This petition was timely filed within ninety days of that date. Section 1254(1) of Title 28 of the United States Code confers on this Court jurisdiction to review the decree in question.

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED.

U.S. Const., art. III, § 1

Bankruptcy Reform Act of 1978, Pub. L. No. 95-598:

§ 238
§ 241(a)
§ 401(a)
§ 404(a)
§ 405

11 U.S.C. § 105

28 U.S.C. § 332(d)

28 U.S.C. § 1331

28 U.S.C. § 1332

28 U.S.C. § 1334

28 U.S.C. § 2071

Sup. Ct. R. 17

Fed. R. Civ. P. 53

Fed. R. Civ. P. 83

Fed. R. Bankr. P. 927

Local Rule of the Northern District of Texas Concerning Bankruptcy Cases and Proceedings

The text of the above-listed provisions is reproduced in Appendix F.

STATEMENT OF THE CASE.

A. Basis for Federal Jurisdiction.

The alleged basis for federal jurisdiction in the court of first instance are Sections 241(a) and 405(b) of the Bankruptcy Reform Act of 1978, Pub.L.No. 95-598 (the

"Bankruptcy Reform Act"), or, in the alternative, Sections 1331, 1332 and 1334 of Title 28 of the United States Code (the "Judicial Code"). Petitioner contends that neither asserted basis confers jurisdiction over the bankruptcy matters and proceedings below.

B. Statement of Facts.

The failure of Congress to enact remedial legislation prior to the December 25, 1982 entry of this Court's judgment in *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, ___ U.S. ___, 102 S.Ct. 2858 (1982) has created significant confusion about the propriety of the exercise of bankruptcy jurisdiction by district court judges and bankruptcy judges. Nevertheless, transactions involving enormous sums of money and actions substantially affecting the rights of numerous parties are continuing to be considered by a court whose statutory grant of jurisdiction was found unconstitutional by this Court in *Marathon*. *Marathon* held that the jurisdictional grant to bankruptcy courts under Section 241(a) of the Bankruptcy Reform Act violated Article III of the Constitution. This Court initially stayed its ruling in *Martahon* until October 4, 1982, to "afford Congress an opportunity to reconstitute the bankruptcy courts or to adopt other valid means of adjudication, without impairing the interim administration of the bankruptcy laws." 102 S.Ct. at 2880. Although this Court later extended the stay until December 24, 1982, it denied a December 23, 1982 request to further extend the stay. On December 25, 1982, the *Marathon* judgment was entered.

The Judicial Conference of the United States, in response to the absence of curative legislation and the expiration of the stay of judgment in *Marathon*, proposed a local rule to be adopted by all United States District Courts (the "District Courts") to govern the conduct of bankruptcy cases pending the adoption of curative legislation. At the instruction of the Fifth Circuit Judicial Council, the proposed rule was adopted in the Northern District of Texas as the Local Rule of the

Northern District of Texas Concerning Bankruptcy Cases and Proceedings (the "Local Rule"). A substantially similar local rule has been adopted in virtually every District Court.

The Local Rule automatically refers all bankruptcy cases, and all proceedings arising out of or related thereto, to the existing bankruptcy judges. In proceedings denominated "core" matters, the bankruptcy judge is authorized to enter a final judgment or order that is effective upon entry, unless stayed pending appeal. In the case of "related proceedings", the bankruptcy judge may not enter a judgment or dispositive order, but must submit findings, conclusions and a proposed judgment or order to the District Court Judge.

A party aggrieved by an order of the bankruptcy judge in a core matter must timely appeal to the District Court. The standard of review of judgments entered in core matters and of proposed judgments lodged in related proceedings is within the discretion of the District Court. The District Court Judge is not required to give deference to the findings of the bankruptcy judge and may accept, reject or modify the judgment of the bankruptcy judge.

The decision below deals directly with the issues raised by entry of the *Marathon* judgment — the Court of Appeals held that the District Courts have bankruptcy jurisdiction and may validly delegate jurisdiction to the bankruptcy judges to enter final orders and judgments. This decision affects several adversary actions brought by Braniff against third parties, as well as the interests of thousands of shareholders, creditors and other parties in interest. Because the issues presented in this case concern whether the District Courts have bankruptcy jurisdiction and whether the Local Rule, which has been adopted in substantially the same form throughout the nation, constitutionally and validly delegates such jurisdiction, this case will determine the integrity of the entire bankruptcy system.

C. Course of Proceeding and Disposition in Court Below.

On May 13, 1982, Braniff and two of its affiliated companies filed petitions for reorganization under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division (the "Bankruptcy Court").[1] On September 27, 1982, Braniff commenced an adversary proceeding (the "Adversary Proceeding") against the Civil Aeronautics Board (the "CAB") in the Bankruptcy Court seeking to enjoin the CAB from revoking, under § 401(g)(3) of the Federal Aviation Act of 1958, as amended, Braniff's certificate of public convenience and necessity to engage in air transportation over the Dallas/Fort Worth-London route and to require the CAB to designate Braniff as the sole United States flag carrier on that route. On December 29, 1982, Petitioner, which had been granted authority by the CAB to serve the Dallas/Fort Worth-London route in place of Braniff, filed a motion to intervene in the Adversary Proceeding. The motion was granted by a December 29, 1982 order of the Bankruptcy Court.

On January 11, 1983, Petitioner filed a motion in the District Court to revoke the Local Rule's automatic reference of the Adversary Proceeding to Bankruptcy Judge Flowers. On January 14, 1983, the District Court entered an order which: (1) held the Local Rule constitutional and valid in all respects; (2) held the District Court to have jurisdiction over bankruptcy matters and proceedings pursuant to Sections 1331, 1332, 1334 and 1471 of Title 28 of the United States Code; (3) revoked the reference effected

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[1]The Braniff Chapter 11 case, consolidated for administrative purposes with the Chapter 11 case of its affiliate Braniff International Corporation, was assigned to The Honorable John Flowers, United States Bankruptcy Judge. Braniff is the only major U.S. airline to have filed Chapter 11 proceedings. Braniff has approximately $460 million in assets and $1.2 billion in debts. Braniff is a publicly-held corporation with more than 75,000 creditors and shareholders.

under the Local Rule; and (4) referred the entire Chapter 11 case of *In re Braniff Airways, Incorporated, et al.*, including all civil proceedings arising therein or related thereto, to Bankruptcy Judge Flowers with instructions to exercise powers and carry out functions identical to those delineated in the Local Rule. The January 14, 1983 order was certified for interlocutory appeal pursuant to 28 U.S.C. § 1292(b) by order of District Court Judge Mahon on January 18, 1983. On January 20, 1983, Judge Mahon issued a Memorandum Opinion in support of the January 14, 1983 order.

A hearing in the Adversary Proceeding was held February 16, 1983. Supplemental briefing was requested by Bankruptcy Judge Flowers, and he is expected to enter his order shortly.

During the pendency of the Adversary Proceeding, Braniff has brought numerous other matters and proceedings before Bankruptcy Judge Flowers, including the December 23, 1982 "Application For Order Setting Hearing to Consider Agreement with Pacific Southwest Airlines." The application sought approval by the Bankruptcy Court of a multi-million dollar lease, sale and loan agreement between Pacific Southwest Airlines ("PSA") and Braniff dated December 22, 1982 (the "Agreement"), which required Braniff, *inter alia*, to transfer or cause to be transferred to PSA certain airport landing rights ("slots"). In addition, Braniff sought approval of a comprehensive compromise and settlement by and among Braniff, its secured creditors, and its unsecured creditors (the "Memorandum").

On January 14, 1983, at the commencement of the hearing before Bankruptcy Judge Flowers to consider approval of the Agreement and Memorandum, Petitioner and numerous other parties objected to the Bankruptcy Court's jurisdiction to approve the Agreement and the Memorandum. On January 15, 1983, Bankruptcy Judge Flowers entered an order overruling the objections to the jurisdiction of the Bank-

ruptcy Court. On appeal, District Judge Mahon, by order dated January 21, 1983, affirmed the January 15, 1983 order of Bankruptcy Judge Flowers and concurrently certified the January 21, 1983 order for interlocutory appeal pursuant to 28 U.S.C. § 1292(b).

On January 25, 1983, Petitioner, seeking appeal of the January 21, 1983 order and the January 14, 1983 order, filed a Petition for Leave to Appeal Pursuant to 28 U.S.C. § 1292(b), which was granted by the United States Court of Appeals for the Fifth Circuit on January 31, 1983. On February 28, 1983, the Court of Appeals, in a per curiam opinion, affirmed the judgment of the District Court essentially for the reasons stated in the January 20, 1983 District Court opinion, and specifically held that 28 U.S.C. §§ 1471(a) and (b) were not invalidated by *Marathon* and, in any case, 28 U.S.C. § 1334 remained a presently effective jurisdictional grant.

On February 1, 1983, after eleven days of hearing, Bankruptcy Judge Flowers entered an order approving the Agreement and the Memorandum. On February 18, 1983, after conducting a three-day *de novo* review hearing, the District Court affirmed the February 1, 1983 order of Bankruptcy Judge Flowers.

The February 18, 1983 order approving the Agreement and Memorandum was appealed to the United States Court of Appeals for the Fifth Circuit by Petitioner and numerous other parties. On March 2, 1983, the Court of Appeals for the Fifth Circuit reversed the February 18, 1983 order of the District Court and remanded the case for further proceedings consistent with its opinion. Braniff has filed a petition for rehearing *in banc* with the Court of Appeals for the Fifth Circuit.

Petitioner seeks a writ of certiorari to review the February 28, 1983 order of the Court of Appeals for the Fifth Circuit affirming the District Court's jurisdiction over the entire Braniff Chapter 11 case, and the delegation of all such jurisdiction to the Bankruptcy Court.

REASONS FOR GRANTING WRIT.

A. THE COURT OF APPEALS FOR THE FIFTH CIRCUIT HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT.

The questions presented in this case are of the utmost national importance. At stake is the administration of over 500,000 pending bankruptcy cases, involving billions of dollars,[2] in which orders are being entered by District Court judges and bankruptcy judges pursuant to the local rules without a jurisdictional foundation. The questionable validity of the local rules and the exercise of bankruptcy jurisdiction by the District Courts has created great uncertainty in the administration of the nation's bankruptcy laws. One District Court and several bankruptcy courts have held invalid local rules similar to the one at issue herein, while other District Courts and bankruptcy courts have upheld the validity of the local rules.[3] Notwithstanding the questionable validity of the local rules, the promulgation of the rules has

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[2]H.R. Rep. No. 807, 97th Cong. 2d Sess. 2, 60 (1982).

[3]In *In re Matlock Trailer Corp.*, No. 382-02778 slip op. at 20-21 (M.D. Tenn. Feb. 23, 1983), the district court held the respective local rule invalid because it did not meet the standards of Fed. R. Civ. P. 53 and because it effected an unconstitutional delegation of judicial power. Holding local rules invalid on the basis that no bankruptcy jurisdiction exists in either the district courts or the bankruptcy courts are: *In re Schear Realty & Investment Co.*, 1983 Bankr. L. Rep. (CCH) ¶ 68,949 (Bankr. S.D. Ohio 1982). *In re Conley*, No. 382-990 (Bankr. M.D. Tenn. Jan. 26, 1983) (not reported). *See also In re Trac Records*, 9 Bankr. Ct. Dec. 1011 (Bankr. N.D. Ga. 1982). Two bankruptcy court decisions finding a lack of bankruptcy jurisdiction in the district courts have been reversed on appeal. *See In re Color Craft Press Ltd.*, No. 82 PM-0974 (Bankr. D. Utah Feb. 7, 1983), *rev'd* No. 83-0140J (D. Utah Feb. 22, 1983); *In re Richardson*, No. 82 PC-0746 (Bankr. D. Utah Feb. 7, 1983), *rev'd* No. 83-0139J (D. Utah Feb. 22, 1983).

Holding that there is an existing grant of bankruptcy jurisdiction to the district courts are: *In re Jermoo's, Inc.*, No. 83-C-174-C (W.D. Wis. March 7, 1983); *In re Northland Point Partners*, Nos. 82-2277-W & 82-2332-W (E.D. Mich. Jan. 7, 1983) (not reported); *In re Johns-Manville Corp.*, No. 82-6221A (Bankr. S.D.N.Y. Jan. 10, 1983) (not reported); *In re Isis Foods, Inc.*, 9 Bankr. Ct. Dec. 1291 (Bankr. W. D. Mo. Jan. 5, 1983); *In re Brown*, 9 Bankr. Ct. Dec. 1276 (Bankr. W.D. Mo. Jan. 4, 1983).

lulled Congress into believing a legitimate basis currently exists for the exercise of bankruptcy jurisdiction and that, accordingly, there is no urgent need for it to enact a legislative remedy to the jurisdictional void created by *Marathon*.

A prompt decision by this Court is required in order to resolve the current uncertainty.[4] If this Court finds that the District Courts have bankruptcy jurisdiction and that the Local Rule properly delegates such jurisdiction to a non-Article III tribunal, certainty will be restored to the admin-

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[4]The interlocutory nature of the orders below should not deter this Court from granting a writ of certiorari to review the important questions presented in this case. Review of the subject orders is proper at the present stage of the proceeding because the important jurisdictional and constitutional questions presented are fundamental to the further conduct of this case. *See United States v. General Motors Corp.*, 323 U.S. 373 (1945); *Land v. Dollar*, 330 U.S. 731 (1947); *Larson v. Domestic and Foreign Commerce Corp.*, 337 U.S. 682 (1949). Similarly, this Court has reviewed interlocutory orders by a writ of certiorari where "there was an insuperable objection to the maintenance of the suit in point of jurisdiction," *Meyers v. Bethlehem Shipbuilding Corp.*, 303 U.S. 41 (1938), and where a case presented a novel and important question affecting the administration of justice in the Court of Appeals, the resolution of which in favor of the petitioner would render void the decree of the Circuit Court, *American Construction Co. v. Jacksonville T & K.W.R. Co.*, 148 U.S. 372 (1893). These principles are equally applicable to the issues presented in the instant case.

The courts below, having certified the subject orders under Section 1292(b) of the Judicial Code, found the questions of law presented herein to involve controlling issues, the resolution of which would materially advance the termination of litigation. This Court has not hesitated to grant a writ of certiorari to review interlocutory orders that have been certified for interlocutory appeal under § 1292(b) where important and novel questions of federal law have been presented. *See, e.g., Fortnightly Corp. v. United Artists Television*, 392 U.S. 390 (1968); *Schnell v. Peter Eckrich & Sons*, 365 U.S. 260, 261 n. 2 (1961); *Continental Grain Co. v. Barge FBL-585*, 364 U.S. 19 (1960).

Civil proceedings arising in or related to the Braniff Chapter 11 case are continuing to be adjudicated by the bankruptcy judge below. Delaying consideration of the fundamental issues presented in this case until a later stage of the proceeding would cause irreparable injury to petitioner and numerous other parties to proceedings being conducted in Braniff's Chapter 11 case, as well as to parties to the 500,000 other pending bankruptcy cases. Clearly, review by a writ of certiorari at this stage of the proceeding is necessary "to prevent extraordinary inconvenience and embarassment in the conduct of the cause." *American Construction Co. v. Jacksonville T & K.W.R. Co.*, 148 U.S. at 384.

istration of the nation's bankruptcy system, thereby disposing of the numerous challenges to the local rules that are now being made throughout the country. If this Court holds that the jurisdictional void created by *Marathon* cannot be cured by judicial fiat and that the Local Rule unconstitutionally delegates the essential attributes of judicial power to non-Article III judges, Congress surely will enact a legislative remedy to the jurisdictional void promptly.

B. THE COURT OF APPEALS FOR THE FIFTH CIRCUIT HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW IN A WAY THAT CONFLICTS WITH THIS COURT'S DECISION IN MARATHON.

Although the important question decided by the Court of Appeals has not been expressly settled by this Court, the order affirming the existence of a statutory grant of bankruptcy jurisdiction to the District Court and the constitutionality and validity of the Local Rule is plainly in conflict with this Court's decision in *Marathon* in four respects. First, although *Marathon* invalidated the entire grant of bankruptcy jurisdiction contained in the Bankruptcy Reform Act, the Court of Appeals held that subsections (a) and (b) of Section 1471 of the Judicial Code are an existing source of bankruptcy jurisdiction exercisable by the district courts. Second, *Marathon* held unconstitutional the exercise of the essential attributes of judicial power — the entering of final orders — by the Article I bankruptcy judges where the claims being adjudicated arise under state law. The plurality opinion of Justice Brennan also made clear that even with respect to congressionally created rights, only those rights which are inherently public in nature may be initially adjudicated by a non-Article III forum. The Local Rule, however, permits bankruptcy judges to enter enforceable final orders in cases which involve the adjudication of rights created under state law and of congressionally-created rights not public in nature, clearly violating the Article III precepts

recognized in *Marathon*, Third, promulgation of the Local Rule conflicts with the mandate of *Marathon* that the restructuring of the bankruptcy laws is for Congress, not the judiciary, to undertake. Fourth, the two-tiered system created by the Local Rule conflicts with the recognition in *Marathon* that Congress intended trial court jurisdiction in bankruptcy matters be exercised in a single forum.

1. The Marathon Decision Invalidates the Entire Jurisdictional Grant Contained in the Bankruptcy Reform Act.

The *Marathon* decision held unconstitutional the jurisdictional grant in 28 U.S.C. § 1471, which in subsection (c) empowered Article I bankruptcy judges to exercise plenary jurisdiction in bankruptcy cases. Because the exercise of bankruptcy power by bankruptcy judges was an integral and non-severable part of a statutory scheme to eliminate the distinction between plenary and summary jurisdiction and to have all matters tried before the non-Article III bankruptcy judges, the plurality, joined by the concurring opinion of Justices Rehnquist and O'Connor, declined to transfer the *Marathon* proceeding to the civil docket of the District Court. In recognizing the non-severability of the three subsections of § 1471, Justice Brennan stated:

> It is clear that, at the least, the new bankruptcy judges cannot constitutionally be vested with jurisdiction to decide this state-law contract claim against Marathon. As part of a comprehensive restructuring of the bankruptcy laws, Congress has vested jurisdiction over this and all matters related to cases under title 11 in a single non-Art. III court, and has done so pursuant to a single statutory grant of jurisdiction. *In these circumstances we cannot conclude that if Congress were aware that the grant of jurisdiction could not constitutionally encompass this and similar claims, it would simply remove the jurisdiction of the bankruptcy court over these matters, leaving the jurisdictional provision and ad-*

> *judicatory structure intact with respect to other types of claims, and thus subject to Art. III constitutional challenge on a claim-by-claim basis.* Indeed, we note that one of the express purposes of the Act was to ensure adjudication of all claims in a single forum and to avoid the delay and expense of jurisdictional disputes. See H.R. Rep. No. 95-595, *supra*, pp. 43-48; S. Rep. No. 95-989, p. 17 (1978). *Nor can we assume*, as the Chief Justice suggests, *post*, at 2, *that Congress' choice would be to have this case 'routed to the United States district court of which the bankruptcy court is an adjunct.' We think that it is for Congress to determine the proper manner of restructuring the Bankruptcy Act of 1978* to conform to the requirements of Art. III, in the way that will best effectuate the legislative purpose.

102 S.Ct. at 2880 n. 40 (emphasis added).[5]

Although the *Marathon* decision did not have a majority opinion, six justices of this Court: (1) agreed that *Marathon* should be dismissed and not transferred to the civil docket of the District Court; (2) recognized that subsections 1471(a), (b) and (c) constituted a unitary and non-severable grant of jurisdiction to bankruptcy courts; and (3) held that it was for Congress, not the courts, to restructure the bankruptcy court system in a manner consistent with Article III and the legislative purposes of the Bankruptcy Reform Act. These determinative aspects of *Marathon* compel the conclusion that there remains under 28 U.S.C. §§ 1471(a) and

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[5]The concurring opinion of Justice Rehnquist, with whom Justice O'Connor joined, concluded as follows:

> Because I agree with the plurality that this grant of authority is not readily severable from the remaining grant of authority to Bankruptcy Courts under § 241(a), see *ante* at 2880 n. 40, I concur in the judgment.

102 S.Ct. at 2882.

(b) no effective grant of bankruptcy jurisdiction to the District Courts.[6]

Because the power of the bankruptcy judge to hear and decide bankruptcy cases and proceedings derives from the Local Rule and the January 14, 1983 order incorporating the Local Rule, and because the District Court which promulgated the Local Rule and made the January 14, 1983 order is without jurisdiction over the bankruptcy case, the bankruptcy judge is without power to consider matters and proceedings arising in the *In re Braniff Airways, Incorporated, et al.* Chapter 11 case. The decision of the Court of Appeals must therefore be reversed.

2. The Local Rule Conflicts With the Mandate of Article III Recognized by Marathon.

Under the Local Rule, bankruptcy judges may enter final orders, effective upon entry, in those matters not denominated "related proceedings." Included within those matters in which the bankruptcy judges are authorized to enter final orders are claims, counterclaims, fraudulent conveyances, preferences and other private rights involving matters in which the state law provides the rule of decision or significantly impacts the rule of decision.[7] Because these matters

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[6]In contrasting the adjunct schemes upheld in prior decisions with the judicial power vested in the "adjunct" bankruptcy court, Justice Brennan stated that the " 'adjunct' bankruptcy courts created by the Act exercise jurisdiction behind a facade of a grant to the district courts." 102 S.Ct. at 2879. Justice Brennan earlier had noted that "the ultimate repository of the Act's broad jurisdictional grant is the bankruptcy courts." 102 S.Ct. at 2862. *See also In re Trac Records*, 9 Bankr. Ct. Dec. 1011, 1019 (Bankr. N.D. Ga. 1982) (entire grant of jurisdiction in Section 241(a) of the Bankruptcy Reform Act invalidated by *Marathon*, and no post-*Marathon* bankruptcy jurisdiction is retained by the district courts).

[7]The distinction maintained between related proceedings and core proceedings under the Local Rule does not parallel the Bankruptcy Act distinction of plenary and summary jurisdiction. With respect to straight bankruptcy cases, summary jurisdiction under the Bankruptcy Act did not include fraudulent conveyances, preferences, and other matters which are encompassed within the "core" proceedings definition. Justice Justice Brennan suggested in *Marathon* that even the exercise of summary jurisdiction under the Bankruptcy Act was of questionable constitutionality. *See* 102 S.Ct. at 2876 n. 31 (broad powers exercised by referees under the Bankruptcy Act "have never been explicitly endorsed by this court"). *See also In re Trac Records*, 9 Bankr. Ct. Dec. 1011, 1019 (Bankr. N.D. Ga. 1982).

involve private rights created under state law, the authority conferred by the Local Rule to enter a final judgment which is enforceable unless stayed pending appeal violates Article III.

In affirming the constitutionality of the Local Rule, the Court of Appeals necessarily found that *Marathon* sanctions the entry of orders by bankruptcy judges in core proceedings because (1) the restructuring of debtor-creditor relations is a public right the adjudication of which may be assigned by Congress to an Article I judge; and (2) core proceedings as defined under the Local Rule involve the adjudication only of congressionally-created public rights. This finding is defective in two respects. First, the plurality in *Marathon* declared only that the *core* of bankruptcy power — the restructuring of debtor-creditor relations[8] — *may* be a public right.[9] The plurality opinion of Justice Brennan provided no further guidance on what part of the bankruptcy power may involve "public rights." Second, even assuming the term "public rights" encompasses certain fundamental rights created by the Bankruptcy Code, it is clear that the rights which may be adjudicated by the Article I bankruptcy judges in core matters fall well outside the realm of any such congressionally-created public rights.[10]

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[8]The discussion was in the narrow context of an argument that a discharge in bankruptcy is a public right. *See* 102 S.Ct. at 2871.

[9]102 S.Ct. at 2871. Later the plurality makes clear that it did not, contrary to the suggestion of Justice White in dissent, concede that all rights and duties created under federal law may be initially adjudicated by Article I courts. 102 S.Ct. at 2876 n. 32. Thus, it simply reaffirmed an earlier holding that *some* adjudicatory functions respecting federally created rights may be assigned to non-Art. III forums. *Id.*

[10]The Court of Appeals implicitly found that the Bankruptcy Court's consideration of the Agreement and Memorandum and whether to enjoin the CAB involve only that part of the restructuring of debtor-creditor relations that lies at the core of the federal bankruptcy power. This obviously is not so. Approval of the Agreement and Memorandum required the Bankruptcy Court to, among other things, construe contracts, adjudicate state-created property rights, and approve the settlement of state-created causes of action. Moreover, to the extent state law was not at issue, the rights created under the Bankruptcy Code involved whether to approve a transfer of assets between private parties, manifestly not something "public" in nature. Similarly, the issue in the Adversary Proceeding — whether to enjoin the CAB under Bankruptcy Code Section 105 from revoking a certificate that assertedly is property of the estate — in no sense involves the adjudication of public rights.

De novo determination by the District Court does not cure the Article III defect which exists under the Local Rule. *Marathon* makes clear that where a final judgment is entered by a non-Article III judge, with the burden on the appellant to obtain a stay pending appeal, the essential attributes of judicial power have been delegated irrespective of the scope of review accorded on appeal.[11]

3. The Local Rule and Reference Order Conflict With the Mandate of Marathon That Only Congress May Remedy the Present Jurisdictional Void.

The Local Rule and the specific order of reference dated January 14, 1983 (the "Reference Order") do by judicial fiat what this Court in *Marathon* expressly declined to do: judicially legislate a solution to the constitutional impediment to the pervasive jurisdiction granted to the Article I bankruptcy judges under the Bankruptcy Reform Act. In *Marathon*, Justice Brennan stated unequivocally that "it is for Congress to determine the proper manner of restructuring the Bankruptcy Act of 1978." 102 S.Ct. at 2880 n. 40. This Court attempted to prevent the present jurisdictional void by holding that its decision in *Marathon* would only apply prospectively as well as taking the unusual step of staying its judgment until October 4, 1982 ". . . to afford

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[11]Justice Brennan noted in *Marathon* that "the constitutional requirements for the exercise of judicial power must be met at all stages of adjudication, and not only on appeal." 102 S.Ct. at 2879 n. 39.

In the proceedings below, Bankruptcy Judge Flowers' February 1, 1983 order approving the Agreement and Memorandum became effective immediately upon entry. Although Judge Flowers denied Petitioner's application for a stay, the parties, fortuitously, agreed not to close the transaction pendig review by the District Court. Bankruptcy Code Section 363(m) provides that unless stayed during appeal, the reversal on appeal of an authorization under Section 363(b) to sell or lease property of the estate does not affect the validity of such sale or lease to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal. Thus, absent the agreement not to close the transaction, Petitioner would have been foreclosed from any effective exercise of the "essential attributes of judicial power" by an Article III court.

Congress an opportunity to reconstitute the bankruptcy courts or to adopt other valid means of adjudication, without impairing the interim administration of the bankruptcy laws." 102 S.Ct. at 2880. When Congress had not enacted a legislative solution to the problem, but appeared to be close, this Court took the extraordinary step of extending the stay until December 24, 1982. When this Court declined to further extend the stay, it fully realized the effect that entry of the *Marathon* judgment would have on the bankruptcy system. This Court undoubtedly determined that the judicial branch of government had done all it could to allow the legislative branch to painlessly remedy the problem caused by the unconstitutional jurisdictional grant in the Bankruptcy Reform Act, and it was unwilling to jeopardize its institutional credibility by granting yet another extension of the stay. The courts below have ignored the clear mandate of this Court to leave the solution to Congress.

4. The Local Rule and Reference Order Contravene the Congressional Intent Recognized in Marathon.

Assuming, *arguendo*, that Congress intended the district court to be vested with trial court jurisdiction in the event the grant of bankruptcy court jurisdiction in the Bankruptcy Reform Act was found unconstitutional, the Local Rule plainly is inconsistent with such Congressional intent. As recognized in *Marathon*, the legislative history makes clear that a primary objective of the Bankruptcy Reform Act was to eliminate the summary/plenary jurisdiction distinction by centralizing all bankruptcy jurisdiction in a single forum.[12] The Rule recreates the very same jurisdictional disputes and

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[12]Justice Brennan noted in *Marathon* that "one of the express purposes of the Act was to ensure adjudication of all claims in a single forum and to avoid the delay and expense of jurisdictional disputes." 102 S.Ct. at 2880 n. 40.

inefficiencies which Congress intended to eliminate by enacting the Bankruptcy Reform Act.[13]

C. THE DISTRICT COURT IS WITHOUT JURISDICTION OVER BANKRUPTCY CASES.

The Court of Appeals found that even if *Marathon* invalidated the entire jurisdictional grant contained in the Bankruptcy Reform Act, the following statutory sections provide an alternative source of bankruptcy jurisdiction exercisable by the District Courts: Sections 1331, 1332 and 1334 of the Judicial Code. These statutes provide no basis for asserting jurisdiction over bankruptcy cases.

1. Section 1331 Does Not Grant the District Court Jurisdiction Over Bankruptcy Cases.

The lower federal courts are courts of limited, not general, jurisdiction, and courts have consistently construed Section 1331 narrowly to accomplish the legislative purpose of restricting the availability of federal tribunals. Because federal courts are courts of limited jurisdiction, this Court has long recognized that "the fair presumption is (not as with regard to a court of general jurisdiction, that a cause is within its jurisdiction unless the contrary appears, but rather) that a cause is without jurisdiction till the contrary appears".

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[13]In reviewing the approval by Bankruptcy Judge Flowers of the Agreement, District Judge Mahon gave no deference to Judge Flowers' findings. Thus, the parties were forced to prepare for and undergo two separate lengthy *de novo* hearings with the initial trial in effect serving no adjudicatory purpose with respect to the findings made in the second trial. On the other hand, Petitioner must rely on Judge Mahon's statement that in the short time available to him he reviewed the entire record before the Bankruptcy Judge, eleven full days of trial. The validity of the Local Rule necessarily requires reliance on a presumption that all district judges will read the entire record on *de novo* review. Such reliance is, as demonstrated above, insufficient grounds to find that District Courts have not delegated the essential attributes of judicial power to the bankruptcy judges.

Turner v. Bank of North America, 4 U.S. (4 Dall.) 8, 11 (1799).[14]

Federal question jurisdiction, Section 1331 of the Judicial Code, grants District Courts jurisdiction over all "civil actions arising under . . . laws . . . of the United States." The federal question jurisdiction granted in Section 1331 has, except for changes in the amount in controversy requirement, been defined the same way since 1875.[15] Federal question jurisdiction granted under Section 1331 and its predecessor was never intended to include a grant of jurisdiction over bankruptcy matters and proceedings.[16] Every bankruptcy law enacted by Congress has included an express and carefully delineated grant of bankruptcy jurisdiction to the District Court.[17] Bankruptcy matters are *sui generis*, involving a supervisory process over the estate of the debtor that combines judicial and administrative functions in a manner wholly inconsistent with the prerequisite for invocation of federal question jurisdiction — the filing of a "civil action."[18] If Congress had intended federal question jurisdiction under Section 1331 to encompass jurisdiction over bankruptcy matters, it would not have enacted express

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[14]Thus, "the presumption in every stage of a cause [is] that it is without the jurisdiction of a court of the United States." *Lehigh Mining and Manufacturing Co. v. Kelly*, 160 U.S. 327, 337 (1895).

[15]*See* 94 Stat. 2369; 72 Stat. 415; 18 Stat. 470.

[16]Federal question jurisdiction plainly could not have provided a sufficient basis for bankruptcy jurisdiction prior to the 1980 elimination of the amount in controversy requirement effected by Pub. L. No. 96-486.

[17]5 Stat. 446; 14 Stat. 517; 30 Stat. 545, 552; 92 Stat. 2668.

[18]*See* 28 U.S.C. § 1331; Fed. R. Civ. P. 3.

Moreover, federal question jurisdiction exists only where federal law provides the rule of decision. Many aspects of bankruptcy law apply state rules of decision. For example, a court determining the allowability of claims (11 U.S.C. § 502(b)(1)), the enforceability of subordination agreements (11 U.S.C. § 510), the validity of security interests (11 U.S.C. §§ 544, 545, 546), and what constitutes property of the estate (11 U.S.C. § 541), wholly or primarily applies state law for the rule of decision.

grants of bankruptcy jurisdiction in each bankruptcy law it has enacted.

This Court in *Romero v. International Terminal Operating Co.*, 358 U.S. 354 (1959), unequivocally answered in the negative an assertion that federal question jurisdiction under Section 1331 includes every claim which arises under federal law, irrespective of the existence of other specifically applicable sources of jurisdiction. There, the plaintiff had urged that federal question jurisdiction included maritime claims which arose under federal law. In rejecting the contention that federal question includes admiralty jurisdiction, this Court stated:

> But neither the aim of the act of 1875 [the predecessor of present 28 U.S.C. Section 1331] to provide a forum for the vindiction of new federally created rights, nor the pressures which led to its enactment, suggest, even remotely, the inclusion of maritime claims within the scope of that statute. The provision of the act of 1875 with which we are concerned was designed to give a new content of jurisdiction to federal courts, not to reaffirm one long-established, smoothly functioning since 1789.

358 U.S. at 368.

Thus, this Court found it dispositive that Congress, as with bankruptcy jurisdiction, had always enacted separate statutory grants of admiralty jurisdiction, both before and after the creation of federal question jurisdiction in 1875. The rationale that prevented this Court in *Romero* from finding that federal question jurisdiction encompassed admiralty jurisdiction is equally applicable to the argument that federal question jurisdiction encompasses bankruptcy jurisdiction. *Romero* compels the conclusion that federal question jurisdiction does not include, and has never included, bankruptcy jurisdiction.

2. Old Section 1334 Is Not a Presently Effective Grant to the District Court of Bankruptcy Jurisdiction.

The Court of Appeals specifically found that the District Court currently has jurisdiction under old Section 1334 of the Judicial Code. This holding ignores the structure of the court system created under the Bankruptcy Reform Act.

Old Section 1334 conferred upon the District Courts "original jurisdiction, exclusive of the courts of the states, of all matters and proceedings in bankruptcy." 28 U.S.C. § 1334 (1976). The Court of Appeals found that Congress intended this grant of "summary jurisdiction" to apply to cases commenced under the Bankruptcy Code ("Code Cases") during the transition period. Not surprisingly, not a single citation to the legislative history of the Bankruptcy Reform Act has been or can be produced in support of this assertion. The reason is clear: Congress could not have intended Code Cases be subject to summary jurisdiction. Moreover, there is no support or logic in the position that Congress intended the summary jurisdiction conferred upon bankruptcy courts under the Bankruptcy Act of 1898 to apply in Code Cases alongside the wholly inconsistent provisions of the Bankruptcy Reform Act which vest plenary trial court jurisdiction in the bankruptcy courts and appellate jurisdiction in the District Courts.

Courts have found that the transition provisions of the Bankruptcy Reform Act regarding the effective date of particular enactments should not be construed in an overly technical manner where to do so would subvert the intent of Congress. In analyzing a gap in the effective dates of statutes governing the dischargeability of student loans, the court in *New York State Higher Education Services Corp. v. Adamo*, 619 F.2d 216 (2d Cir. 1980), stated:

> We conclude that the hiatus between [the repeal of the former statute and the effective date of its successor] was purely a manifestation of congressional inadvertence and that to follow blindly the plain meaning of

> the statute without regard to the obvious intention of Congress would create an absurd result in accord with neither established principles of statutory construction nor common sense. . . .
>
> Analysis of the legislative history of the [Bankruptcy Reform Act] supports appellant's contention that the failure of the effective dates of the repeal and replacement statutes to coincide resulted from a mistake of Congress.

619 F.2d at 219. In language which is equally applicable to a purported intention of Congress to continue during the transition period the summary jurisdiction granted district courts under old Section 1334, the court, holding that it would not follow a construction which produced an unintended result, stated that:

> There is no indication in the history of the [Bankruptcy Reform Act] that Congress intended to legislate such an inconsistency or that it sought for some unexpressed reason to create an approximately eleven month hiatus. . . .

619 F.2d at 220.

New Section 1334 respecting appellate jurisdiction of the District Court is presently effective under Section 405(c)(2) of the Bankruptcy Reform Act. Several courts have noted that during transition the only bankruptcy jurisdiction that can be exercised by District Courts with respect to cases commenced on or after October 1, 1979 is that found in the new Section 1334.[19]

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[19]*See, e.g., Maiorino v. Branford Sav. Bank*, 691 F.2d 89 (2d Cir. 1982) (§ 405(c)(2) of the Bankruptcy Reform Act grants to the District Courts the same jurisdiction over appeals from decisions of bankruptcy judges that will apply after the transition period; although certain transition provisions which were hastily drawn during an eleventh hour compromise produced apparently inadvertent inconsistencies in the statute, construction of § 405(c)(1) that would lead to incongruous and anomalous result should be avoided absent some evidence that Congress deliberately intended such result). *Accord In re Callister*, 673 F.2d 305 (10th Cir. 1982); *In re Kutner*, 656 F.2d 1107 (5th Cir. 1981), *cert. denied*, 455 U.S. 945 (1982); *In re Wolf*, Bankr. L. Rep. (CCH) ¶ 67,947 (Bankr. D. Mass. 1981).

Congress plainly could not have intended the grant of summary jurisdiction[20] under old Section 1334 to apply to Code Cases alongside the plenary grant of trial court jurisdiction to the bankruptcy judges and the grant of appellate jurisdiction to the District Courts. The existence of a jurisdictional void does not grant to the judiciary a license to override Congressional intent. Old Section 1334 clearly is not a presently effective grant to the District Courts of jurisdiction over bankruptcy matters and proceedings.[21]

D. THE DISTRICT COURT WAS WITHOUT AUTHORITY TO PROMULGATE THE LOCAL RULE OR ORDER THE SPECIFIC REFERENCE.

Several sources were asserted by the courts below as authority for the promulgation of the Local Rule and the entry of the Reference Order.[22] As will be demonstrated, none of these sources permit the District Court to promulgate the Local Rule or to specifically refer an entire Chapter 11 case with instructions to exercise powers and carry out functions identical to those delegated under the Local Rule.

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[20]Even if old Section 1334 applies to Code Cases, the jurisdiction is limited to summary jurisdiction. At least a portion of the relief sought by the Respondent in the Bankruptcy Court is not within the summary jurisdiction of old Section 1334. Landing rights at airports ("slots") are not property in the "actual or constructive possession" of Braniff; instead, the slots are an intangible over which the FAA makes a substantial adverse claim. While a panel of the Fifth Circuit has held that slots are not property of the estate, Respondent has not yet exhausted its appellate remedies with respect to this finding.

[21]For those proceedings not arising under federal law, the District Court in its Memorandum Opinion relies on the diversity jurisdiction granted under 28 U.S.C. § 1332 for a basis of rounding out the jurisdiction of the District Court to make it consistent with the broad invalidated jurisdictional grant of 28 U.S.C. § 1471. Diversity jurisdiction requires complete diversity between all plaintiffs and all defendants. No diversity exists between the Petitioner and Respondent, both of which have their principal place of business in Texas. 28 U.S.C. § 1332(c).

[22]The Opinion of the District Court identified Section 105 of the Bankruptcy Code, Bankruptcy Rule 927, Section 2071 of the Judicial Code, and the inherent power of the District Court as sources of authority for promulgation of the Local Rule or for issuance of the order specifically referring the entire Chapter 11 case.

1. Rule 83 Does Not Authorize Promulgation of the Local Rule.

(a) The Local Rule Exceeds the Scope of Authority Conferred by Fed. R. Civ. P. 83.

One asserted basis for the promulgation of the Local Rule is Rule 83 of the Federal Rules of Civil Procedure.[23] Rule 83 authorizes each district court to "make and amend rules governing its practice not inconsistent with these rules." Fed. R. Civ. P. 83. In *Miner v. Atlass*, 363 U.S. 641 (1960), this Court addressed the validity of a local rule adopted by a District Court that provided for the taking of depositions in admiralty cases. In striking down the local rule, this Court held that "basic procedural innovations" are beyond the local rule-making power.[24] A delegation to Article I judges of ultimate decision-making authority in connection with a blanket reference of all bankruptcy cases and proceedings

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[23]Bankruptcy Rule 927 has also been urged as a source of authority for the Local Rule. The following discussion of Rule 83 is equally applicable to Bankruptcy Rule 927, except that with respect to Bankruptcy Rule 927 there is an additional issue of whether it is of continuing vitality. *See* Pub. L. No. 95-598, § 405(d).

Section 2071 of the Judicial Code, which authorizes courts to "prescribe rules for the conduct of their business," and Section 332 of the Judicial Code, which authorizes the Judicial Councils of the Circuits to "make all necessary and appropriate orders for the effective and expeditious administration of justice," provide no authority for promulgation of the Local Rule for reasons substantially similar to those set forth in the following discussion of Rule 83.

Section 105 of the Bankruptcy Code has also been asserted as a possible source of authority. Its purpose is to permit courts to make orders in specific cases, primarily to protect its custody of the estate and to aid its administration of the estate. *Cf.* 1 *Collier on Bankruptcy*, ¶ 2.61 (14th ed. 1974) (discussing predecessor to § 105, § 2(a)(15) of the Bankruptcy Act of 1898). Section 105 has absolutely no application to the promulgation of the Local Rule.

[24]In *Colgrove v. Battin*, 413 U.S. 149 (1973), this Court noted that a "basic procedural innovation" was one that bore on the ultimate outcome of the litigation. If the delegation to a non-Art. III judge of the authority to enter final orders does not bear on the "ultimate outcome of the litigation," this Court in *Marathon* would not have held that Section 241(a) of the Bankruptcy Reform Act unconstitutionally delegated the essential attributes of judicial power in giving ultimate decision-making authority to the Art. I bankruptcy judges.

manifestly is a "basic procedural innovation" beyond the scope of the authority conferred by Rule 83.[25]

(b) The Local Rule Is Inconsistent With Rule 53.

Local rules that are inconsistent with the Federal Rules of Civil Procedure are invalid under Rule 83. Rule 53 applies to references of the kind contemplated in the Local Rule.

Under the Local Rule, a bankruptcy judge exercises precisely the powers contemplated by the definition of master contained in Rule 53(a), which "includes a *referee*, an auditor, and an examiner, a commissioner, and an assessor." Fed. R. Civ. P. 53(a) (emphasis added). In *Arthur Murray, Inc. v. Oliver*, 364 F.2d 28, 32 (8th Cir. 1962), the court stated as follows:

> It will be noted that [Rule 53] is directed at the use of reference as a procedural vehicle in general. Every reference to a master, no matter what the litigation incident involved may be, and regardless of what may be the form or scope of the task sought to be referred, is within the application of the Rule.

However, the grounds for a reference enumerated in Fed. R. Civ. P. 53(b) are limited:

> A reference to a master shall be the exception and not the rule. . . . [I]n actions to be tried without a jury, save in matters of account and of difficult computation of damages, a reference shall be made only upon a showing that some exceptional condition requires it.

The authority to order a reference under Rule 53 was narrowly circumscribed in *LaBuy v. Howes Leather Co., Inc.*, 352 U.S. 249 (1957), where the District Court appointed a master in two related antitrust cases involving 87

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[25] *Cf.* Fed. R. Civ. P. 82 ("[t]hese rules shall not be construed to extend or limit the jurisdiction of the United States district courts"); *Owen Equipment & Electric Co. v. Kroger*, 437 U.S. 365, 370 (1978) ("it is axiomatic that the Federal Rules of Civil Procedure do not create or withdraw jurisdiction"); *United States v. Sherwood*, 312 U.S. 584, 589-90 (1941) (this Court has no authority to prescribe rules which enlarge or diminish the jurisdiction of federal courts).

plaintiffs and 6 defendants. In affirming the issuance of a writ of mandamus requiring the District Court to vacate its order of reference, this Court declared that calendar congestion, unusual complexity of issues, and the great length of time required for trial did not constitute exceptional grounds warranting the reference to a master. 352 U.S. at 259.[26] Plainly, the exceptional grounds sufficient to warrant a reference of an entire Chapter II case have not been demonstrated here.

Not only does the Local Rule violate the limitations of Rule 53(b), it is also inconsistent with Rule 53(e). Under Rule 53(e)(2) the court in non-jury actions "shall accept the master's findings of fact unless clearly erroneous." Local Rule Section (e)(2)(B) provides for *de novo* review by the District Court, which need not give deference to the bankruptcy judge's findings. More importantly, under Rule 53(e), a master only makes a report to the District Court, which is exclusively authorized to enter final orders and judgments. Under the Local Rule, bankruptcy judges enter final orders enforceable upon entry unless stayed pending appeal. This plainly conflicts with this Court's declaration in *LaBuy* that "[t]he use of masters is 'to aid judges in the performance of specific judicial duties, as they may arise in the progress of a cause' . . . and not to displace the court." 352 U.S. at 256.

2. The District Court Had No Inherent Authority to Promulgate the Local Rule or Order the Specific Reference.

Another possible source of support for the Local Rule or the Reference Order is the inherent authority of the District Court to appoint auditors or experts. In order for the Local

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[26] *See also Wilver v. Fisher*, 387 F.2d 66 (10th Cir. 1967) (delay on the part of defendants, and the variety, number and complicated nature of the problems and issues involved, did not amount to an exceptional circumstance to justify an appointment of a master to supervise answers to interrogatories).

Rule or the Reference Order to be within the inherent power of the District Court, the Rule or the Order must (1) be within the scope of the inherent authority; and (2) not be contrary to legislation. *Ex Parte Peterson*, 253 U.S. 300, 312-13 (1920). Neither condition is satisfied here.

(a) The Rule and the Reference Order Are Beyond the Inherent Power of the District Court.

The inherent authority recognized in *Peterson* provides no basis for the promulgation of a rule effecting a blanket reference to bankruptcy judges of all bankruptcy cases and proceedings nor an order specifically referring an entire Chapter 11 case and all proceedings arising in or related thereto. In *Peterson*, this Court recognized the inherent authority of a District Court to appoint an auditor to conduct a preliminary hearing for the purpose of reviewing lengthy records, identifying items in dispute, and expressing an opinion upon the items found to be in dispute, but not finally determining any of the issues, the final determination of which was to be made by the jury at trial.

In discussing the court's inherent power, this Court stated:

> Courts have (at least, in the absence of legislation to the contrary) inherent power to provide themselves with appropriate instruments required for the performance of their duties. This power includes authority to appoint persons unconnected with the court to aid judges in the performance of specific judicial duties as they may arise in the progress of a cause. . . . 'It is a reference to "auditors,"— a term which designates agents or officers of the court, who examine and digest accounts for the decision of the court. They do not decree but prepare materials on which a decree is to be made.'

253 U.S. at 312-13 (citations omitted).

Peterson and the cases relying on it involve the inherent power of a trial court to appoint agents to make preliminary findings and to provide expert guidance to the court. None

of the cases discussing the inherent authority of the court involve the delegation of ultimate judicial decision-making that is effected under the Local Rule. A delegation of authority to the bankruptcy judge to enter final orders and judgments is not within the inherent authority recognized in *Peterson*.

(b) Rule 53 Limits the Inherent Power of the District Court.

This Court in *Peterson* expressly recognized that inherent power is subject to limitations imposed by legislation. Because Fed. R. Civ. P. 53 governs references of the kind contemplated by the Local Rule and the Reference Order, it is an express limitation on the inherent power of the District Court. The District Court may not rely on inherent power to create a system that differs from, yet parallels, the Rule 53 treatment of masters.

CONCLUSION.

Marathon's invalidation of the non-severable jurisdictional grant of the Bankruptcy Reform Act and the absence of curative Congressional action have closed the doors of the federal courts to bankruptcy matters. This Court recognized and postponed that result by staying its judgment as long as it could. When the stay expired, so did the judicial power of the courts of the United States to postpone the result. Now Congress must take full responsibility for all the resulting disruption. When Congress realizes that it must act, presumably it will. But no parade of horribles can justify destroying the basic cornerstone of our Constitutional system of government — separation of powers.

For the foregoing reasons, the Court should grant this Petition for Writ of Certiorari and should reverse the Order affirming the validity and constitutionality of the Local Rule.

Dated: April 1, 1983.

Respectfully submitted,

RONALD S. ORR,
ROBERT FORGNONE,*
BENNETT L. SILVERMAN,
DAVID H. KENNEDY,
GIBSON, DUNN & CRUTCHER
and
STEPHEN L. TAYLOR,
Attorneys for Petitioner.
**Counsel of Record.*

APPENDIX A.

Decision of the Court of Appeals.

United States Court of Appeals for the Fifth Circuit.

No. 83-1048.

In the Matter of: Braniff Airways, Inc., et al., Debtor.

Braniff Airways, Inc., et al., Plaintiffs-Appellees, versus Civil Aeronautics Board, Defendant, American Airlines, Inc., Intervenor-Appellant.

Appeal from the United States District Court for the Northern District of Texas.

(FEBRUARY 28, 1983).

Before GEE, GARZA and POLITZ, Circuit Judges.

PER CURIAM:

We affirm the judgment of the District Court, essentially for the reasons stated in its memorandum opinion. We add, in particular, that we conclude that 28 United States Code §§147(a) and (b) were not invalidated by the *Marathon* decision,[1] but if they were, nevertheless, the jurisdictional grant of 28 United States Code §1334 remains effective during the transitional period.

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[1]The Northern Pipeline Construction Co. v. Marathon Pipeline Co., ___ U.S. ___, 102 S.Ct. 2858, 73 L.Ed.2d 598 (1982).

APPENDIX B.

Order.

In the United States District Court for the Northern District of Texas Fort Worth Division.

In re: Braniff Airways, Incorporated, et al.

Braniff Airways, Incorporated, et al. vs. Civil Aeronautics Board.

Miscellaneous No. 4-221-E. (Fort Worth Bankruptcy No. 4-82-00369).

Filed: January 14, 1983.

This case came before the Court on a motion to revoke the reference to United States Bankruptcy Judge John Flowers of *In re Braniff Airways, Inc., et al.*, Fort Worth Bankruptcy Division Case No. 4-82-00369. After considering the motion, brief and oral argument of counsel, the Court makes the following rulings:

1. The Local Rule of the Northern District of Texas Concerning Bankruptcy Cases and Proceedings adopted by the United States District Court for the Northern District of Texas on December 21, 1982, is constitutional and valid.

2. The Court has jurisdiction over bankruptcy matters and proceedings, including this case, pursuant to sections 1331, 1332, 1334 and 1471 of Title 28 of the United States Code.

3. To avoid any possible jurisdictional attack based on the adoption and promulgation of the Local Rule, and in order to provide certainty in the resolution of this exceptional and complicated case, the reference of this case to Bankruptcy Judge Flowers is hereby withdrawn.

4. The Court finds that there are exceptional conditions and circumstances in *In re Braniff Airways, Inc.*, including, but not limited to the following:

> The case was filed on May 13, 1982, and has been through eight (8) months of proceedings before the Honorable John Flowers.

Braniff is the only major airline to go into Chapter 11 bankruptcy reorganization.

The debtor, Braniff, has approximately $460 million in assets and $1.2 billion in debts.

Some of this debt is publicly-held. Braniff is a publicly-held corporation. In fact, Braniff has more than 75,000 creditors and shareholders.

More than 100 lawyers are already involved in these proceedings.

There is much equipment, formerly used by the debtor, now sitting idle.

The most exceptional circumstance is that Judge Flowers has dedicated eight months of work to this case. Thus, he has singular knowledge and expertise as to the facts and law in this most complicated case.

Although each of these facts was not specifically presented in the motions, briefs and arguments before this Court, the Court has taken judicial knowledge of these and other matters on file in the Bankruptcy Clerk's Office.

5. It would be a travesty of justice for this Court to leave unprotected the rights of creditors, shareholders and interested parties. Justice demands that this case quickly proceed to an orderly and final conclusion.

6. Therefore, pursuant to this Court's statutory and general *equitable* powers, and the Federal Rules of Civil Procedure, and due to the exceptional circumstances in this case, the Court hereby ORDERS that the entire matter of *In re Braniff Airways, Inc., et al.*, to the extent this Court has jurisdiction, is referred to the Honorable John Flowers, Bankruptcy Judge for the Northern District of Texas, Forth Worth Division. The powers and functions to be exercised by Judge Flowers under this reference are identical to those delineated in the Local Rule of the Northern District of Texas Concerning Bankruptcy Cases and Proceedings, adopted on December 21, 1982.

The Court reserves the right to enter further findings on this matter.

Signed this 14th day January, 1983.

/s/ Eldon B. Mahon
UNITED STATES DISTRICT JUDGE

APPENDIX C.

Memorandum Opinion.

In the United States District Court for the Northern District of Texas, Fort Worth Division.

In re: Braniff Airways, Incorporated, et al.

Braniff Airways, Incorporated, et al. vs. Civil Aeronautics Board.

Miscellaneous No. 4-221-E. (Ft. Worth Bankruptcy No. 4-82-00369).

A hearing was held on January 13, 1983, concerning a "Motion to Revoke Reference of Adversary Proceedings" filed on January 11, 1983 by American Airlines, Inc., a corporation and an intervenor in the above-captioned proceeding pending before the Fort Worth Bankruptcy Division of this Court. The Court entered an Order on January 14, 1983 holding that the Local Rule of the Northern District of Texas Concerning Bankruptcy Cases and Proceedings adopted by the United States District Court for the Northern District of Texas on December 21, 1982,[1] is constitutional and valid, and further holding that the Court has jurisdiction over bankruptcy cases and proceedings, including the one presently before it, pursuant to sections 1331, 1332, 1334, and 1471 of Title 28 of the United States Code. In support of that Order, the Court will now elaborate on its reasons by addressing: (1) The Court's Jurisdiction, (2) *Marathon's* Effect on the "Structure" of the Bankruptcy System, (3) The Court's Statutory and Equitable Powers, and (4) The Referral of the Braniff Bankruptcy Proceeding to the Bankruptcy Judge.

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[1]The stay of the United States Supreme Court of the effect of its decision in *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 102 S.Ct. 2858 (1982), expired on Dec. 24, 1982. Thus, the Local Rule became effective on December 25, 1982.

I. *The Court's Jurisdiction*

A. 28 U.S.C. § 1471.

The United States Supreme Court invalidated at least a portion of 28 U.S.C. § 1471 in *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 102 S.Ct. 2858 (1982) (hereinafter called *Marathon*). In his plurality opinion, Justice Brennan states:

> We conclude that § 241(a) of the Bankruptcy Act of 1978 has impermissibly removed most, if not all, of "the essential attributes of the judicial power" from the Art. III district court, and has vested those attributes in a non-Art. III adjunct. Such a grant of jurisdiction cannot be sustained as an exercise of Congress' power to create adjuncts to Art. III courts.

Marathon at 2879-80.[2] By stating that the power was "impermissibly removed" from the district court, the Supreme Court clearly indicates that jurisdiction was first vested in the Art. III district court pursuant to § 1471(a), and it expresses no disapproval of this grant of jurisdiction to the district court.

The next sentence and footnote of the plurality opinion, however, have led to some confusion over what parts of § 1471 were invalidated. Justice Brennan continues:

> Having concluded that the broad grant of jurisdiction to the bankruptcy courts contained in § 241(a) is unconstitutional, we must now determine whether our holding should be applied retroactively to the effective date of the Act.

Marathon at 2880.

In his use of the words "bankruptcy courts" in *Marathon*, Justice Brennan makes a distinction between bankruptcy

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[2]Section 241(a) of the Bankruptcy Reform Act of 1978 includes not only the jurisdictional grants in 28 U.S.C. § 1471, but also venue, removal and other procedural matters. The Supreme Court decision in *Marathon* addresses only the jurisdictional grants of § 1471, which is included in § 241(a).

courts and district courts. This should not be confused with the bankruptcy laws which define "courts of bankruptcy" to include the district courts. *See* Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, § 404(a), 92 Stat. 2549, 2683 (1978). Thus, the "broad grant of jurisdiction to the bankruptcy courts" does not refer to the grant of jurisdiction to the district courts. Furthermore, in footnote 40, he states:

> It is clear that, at the least, the new bankruptcy judges cannot constitutionally be vested with jurisdiction to decide this state-law contract claim against Marathon. As part of a comprehensive restructuring of the bankruptcy laws, Congress has vested jurisdiction over this and all matters related to cases under title 11 in a single non-Art. III court, and has done so pursuant to a *single statutory grant of jurisdiction.*

Marathon at 2880 n.40 (emphasis added). This Court interprets the phrase "single statutory grant of jurisdiction" as referring to the words "all of the jurisdiction" in § 1471(c). This grant of jurisdiction under § 1471(c) encompasses not only bankruptcy "cases" (*see* § 1471(a)) but also "all civil proceedings arising under title 11 or arising in or *related to* cases under title 11." 28 U.S.C. § 1471(b) (emphasis added). The Supreme Court's conclusion that at least some of the "related to" matters must be heard by an Art. III court meant that the words "all of the jurisdiction" contain both constitutional and unconstitutional grants of jurisdiction to the bankruptcy courts. Thus, an attempt to separate and remove the unconstitutional part of the bankruptcy court's jurisdiction from the constitutional part of its jurisdiction would be no easy feat. Facing such a difficulty, and examining the intent of Congress in § 1471(c), Justice Brennan continues his footnote:

> In these circumstances we cannot conclude that if Congress were aware that the grant of jurisdiction could not constitutionally encompass this and similar claims, it would simply remove the jurisdiction *of the bankruptcy court over these matters, leaving the jurisdic-*

> *tional provision* [in the bankruptcy court] *and adjudicatory structure intact with respect to other types of claims*, and thus subject to Art. III constitutional challenge on a claim-by-claim basis. Indeed, we note that one of the express purposes of the Act was to ensure adjudication of all claims in a single forum and to avoid the delay and expense of jurisdictional disputes.

Marathon at 2880 n.40 (emphasis added).

Finally, Justice Brennan concludes the footnote:

> Nor can we assume, as THE CHIEF JUSTICE suggests, *post*, at 2, that Congress' choice would be to have *this case* "routed to the United States district court of which the bankruptcy court is an adjunct." We think that it is for Congress to determine the proper manner of restructuring the Bankruptcy Act of 1978 to conform to the requirements of Art. III, in the way that will best effectuate the legislative purpose.

Marathon at 2880 n.40 (emphasis added). The difficulty was *not* in separating § 1471(c) from § 1471(a) and (b), but in separating jurisdiction over "this case," *i.e.* a case like *Marathon*, requiring an Art. III court, from the other appropriate jurisdiction of the bankruptcy court over non-Art. III matters, all of which were combined in the words "all of the jurisdiction" in 28 U.S.C. § 1471(c). Therefore, this Court concludes that the Supreme Court never intended to invalidate, nor did it invalidate 28 U.S.C. § 1471(a) and (b), and that *Marathon* only held 28 U.S.C § 1471(c) unconstitutional.[3]

B. 28 U.S.C § 1334, § 1331, and § 1332.

In light of the debate surrounding the continued validity of 28 U.S.C. § 1471(a) and (b), the Court will also address the question of its jurisdiction over bankruptcy cases and

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[3]*See United States v. One 1974 Rockwell Aerocommander*, Civ. No. 4-80-289-E, at 5 n.2 (N.D. Tex. Jan. 11, 1982), where, in an unpublished union, this Court held subsection (c) to be the "fatal flaw" in section 1471.

proceedings assuming *arguendo* that 28 U.S.C. § 1471 is no longer valid. During the transition period (from October 1, 1979, through March 31, 1984), Congress clearly intended for both the old and new versions of 28 U.S.C. § 1334 to exist simultaneously. *See* Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, §§ 402, 403, 404, 92 Stat. 2549, 2682-83 (1978). The old § 1334 stated: "The district courts shall have original jurisdiction, exclusive of the courts of the States, of all matters and proceedings in bankruptcy." 28 U.S.C. § 1334. It may be argued that Congress, in writing the new version of 28 U.S.C. § 1334 (making district courts the courts of appeals for final judgments, orders, and decrees of bankruptcy courts absent an appointed bankruptcy judge panel), intended that the old § 1334 would only apply to cases filed before October 1, 1979.

However, if the new grant of original and exclusive jurisdiction in 28 U.S.C. § 1471(a) — which was meant to repeal and replace the old § 1334 for cases filed after October 1, 1979 — is unconstitutional and no longer valid, the Court must now read the bankruptcy laws as if the new § 1471 had not been written. *See Frost v. Corporation Comm'n of Oklahoma*, 278 U.S. 515, 526-27 (1929); *Davis v. Wallace*, 257 U.S. 478, 485 (1922). In so doing, the Court finds that the old § 1334 places the original and exclusive jurisdiction over bankruptcy matters and proceedings in the district court.

This jurisdiction under the old § 1334 was "summary jurisdiction" only. The Court must now look to 28 U.S.C. § 1331 and § 1332 for those cases which would have originated in the federal district court because of either a federal question involved or the diversity of citizenship of the parties. Those cases, now properly in the district court's jurisdiction, may be combined with the bankruptcy cases in which they arise or to which they are related for the purpose of referring both the bankruptcy "matters and proceedings" (in this court's jurisdiction under the old § 1334) and the

"arising in or related to" matters (in this court's jurisdiction under 28 U.S.C. § 1331 or § 1332) to the bankruptcy judge.[4]

II. *Marathon's Effect on the "Structure" of the Bankruptcy System*

Next, the Court turns to the question of what adjudicatory structure[5] remains intact after *Marathon*. During the transition period from October 1, 1979, through March 31, 1984, Congress intended the old structure (under the 1898 Bankruptcy Act) to exist concurrently with the new structure (under the 1978 Bankruptcy Reform Act).[6] Assuming *arguendo* that *Marathon* rendered the new bankruptcy structure unusable, the Court nevertheless has available an entire structure, left intact by Congress and *Marathon* and in existence through March 31, 1984, which may be used for the adjudication of bankruptcy cases and proceedings.

Counsel for American Airlines suggest that the Court, in promulgating the "Local Rule of the Northern District of Texas Concerning Bankruptcy Cases and Proceedings" is creating a subsidiary court ("Memorandum of Points and Authorities in Support of Motion to Revoke Reference of

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[4]The Court is aware of the assertion that the word "case" in 28 U.S.C. § 1471(a) is narrower than "all matters and proceedings in bankruptcy" in the old § 1334. *See* 1 *Collier Bankruptcy Manual* ¶ 3.01[1][a] (3d ed. 1982). However, *either* by combination of § 1471(a) and (b) — giving this court jurisdiction over both "cases under title 11" [§ 1471(a)] and "all civil proceedings arising under title 11 or arising in or related to cases under title 11" [§ 1471(b) *or* by the combination of bankruptcy "matters and proceedings" (old § 1334) and federal questions (§ 1331) and diversity suits (§ 1332), the Court concludes that it has jurisdiction over the matters now before it, as a basis for referring these matters to the bankruptcy judge. The parties in any civil proceedings which are "related to" bankruptcy cases, and which involve purely state law questions in which there is no diversity may raise such jurisdictional questions on a case by case basis (and only if § 1471(a) and (b) are no longer valid).

[5]*See* note 40 in *Marathon*.

[6]Bankruptcy Act of 1978, Pub. L. No. 95-598, §§ 404 & 405, 92 Stat. 2549, 2683-85 continues the old bankruptcy structure through March 31, 1984.

Adversary Proceedings" page 14). On the contrary, the Court is not "creating" anything, but is instead relying on and making use of an entire structure created by Congress, which will remain in existence through March 31, 1984, and which is already being used for the adjudication of cases filed before October 1, 1979. Furthermore, the Court disagrees with the suggestion that such a local rule, by using the presently existing bankruptcy structure, is in any way an "innovation" beyond the Court's local rule-making power. *See Miner v. Atlass*, 363 U.S. 641 (1960).

III. *The Court's Statutory and Equitable Powers*

Having found an existing bankruptcy court structure,[7] the Court will now address its authority to use this existing structure to adjudicate bankruptcy cases and proceedings.

A. Statutory Authority.

Title 11 of the United States Code, as amended by the Bankruptcy Reform Act of 1978, provides that the "bankruptcy court may issue any order . . . necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a), *as amended by* Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, § 101, 92 Stat. 2549, 2555 (1978). As defined in section 404(a) of the same Act, federal district courts are included in the definition of bankruptcy courts. *Id.* § 404(a), 92 Stat. at 2683.

The Local Rule, promulgated in an attempt to carry out congressional intent, would be clearly valid if based solely on this congressional grant of authority. The Order establishing the local rule was "necessary . . . to carry out" the congressional intent expressed by the whole statutory scheme, and is an "appropriate" means of carrying out the expressed intent.

Bankruptcy Rule 927, continued at least for the "interim period," October 1, 1979, through March 31, 1984, *see*

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[7] *See* II. *supra*.

Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, §§ 402(b) & 404, 92 Stat. 2549, 2682-83 (1978), also authorizes adoption of local rules establishing court procedures. *See also* Fed. R. Civ. P. 83. The local rule adopted on December 21, 1982, would be, under this rule, a valid exercise of the Court's power to control procedure in the trial court.[8]

Finally, section 2071 of Title 28 of the United States Code allows courts the discretion to enact the rules under which they will conduct their business. As under the other statutory grants of authority mentioned above, this Court recognizes it is not legislating a solution to the bankruptcy problem, but merely implementing congressional intent under specific grants of authority.

B. Equitable Powers.

Since the murky beginnings of English jurisprudence, the common law courts have sought to provide justice. More recently, Roscoe Pound observed that our law has been guided by the principle that "all legal institutions and all legal rules [are] . . . measured by reason and . . . nothing could stand in law that could not maintain itself in reason." R. Pound, *The Spirit of the Common Law* 81. Pound concludes that the development of Law will be effected through a theory of "right and justice and [a] conscious attempt to

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[8]Bankruptcy Rule 927 and Fed. R. Civ. P. 83 both require that rules made under their authority are not to be "inconsistent with these rules." Nothing in the Local Rule is inconsistent with either the Federal Rules of Civil Procedure or the Bankruptcy Rules.

make the law conform to ideals." *Id.* at 84.[9] The practical application of this Court's attempts at justice, however, must be guided by the equity[10] jurisprudence of the United States.

Early decisions of the United States Supreme Court determined that "[t]here are certain powers inherent in the judicial office." *Nudd v. Burrows*, 91 U.S. (1 Otto) 426, 442 (1875). There is yet some doubt as to Congress' power to "trench upon the common-law powers" with which the judge is clothed. *Indianapolis & St. Louis R.R. v. Hors*, 93 U.S. (3 Otto) 291, 300 (1876). *See also Grimes Dry Goods Co. v. Malcolm*, 164 U.S. 483, 490 (1896); *Mutual Accident Assoc. v. Barry*, 131 U.S. 100, 120 (1889). In

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[9]Although the Constitution and laws of the United States define specific legal principles, equitable application of these principles depends on the application of common sense. Such common sense is reflected in the everyday events of the People. For example, the Court recalls the 1954 Cotton Bowl game involving the Universities of Rice and Alabama. As Dick Moegle of Rice sped along the sideline, heading for a certain score, Tommy Lewis leaped from the Alabama bench to tackle his opponent. Such interference was not covered by the collegiate rulebook, but the referee carried the ball to the goal line and awarded Rice a touchdown. This action illustrates the wisdom of the People in allowing officials to interpret the rules to result in a just decision. The referee "may enforce any penalty he considers equitable" to remedy unfair acts not covered by specific rules. *See* D. Nelson, *Illustrated Football Rules* 174 (Doubleday & Co. 1976).

The Court does not put sporting events on the same level as complex bankruptcy matters, but the wisdom reflected in this simple event illustrates the concept of "Natural Equity," defined as:

> equivalent to justice, honesty, or morality in business relations, or man's innate sense of right dealing and fair play. . . . the term "natural equity" may be understood to denote, in a general way, that which strikes the ordinary conscience and sense of justice as being fair, right, and equitable . . . .

Black's Law Dictionary 635 (4th ed. 1968).

[10]Equity is defined as

> Justice administered according to fairness as contrasted with the strictly formulated rules of common law . . . an alternative to the harsh rules of common law and . . . based on what was fair in a particular situation. . . . the spirit and habit of fairness, justness, and right dealing . . . . the object of which is to render the administration of justice more complete, by affording relief where the court of law are incompetent to give it . . . .

Black's Law Dictionary 484 (5th ed. 1979).

dispensing justice, this Court must be limited to its constitutional role — reaching neither into the legislative nor executive branches in its exercise of power. Nevertheless, the Court cannot shrink from its constitutional duty because of a lack of precise guidelines. *See Landwehr v. United States* (*In re Miller*), 485 F.2d 74 (5th Cir. 1973), *cert. denied*, 415 U.S. 990 (19...).

Congress has provided an intricate scheme within which bankruptcy disputes can be brought to just conclusions.[11] Congress has authorized the courts to make provisions for procedural matters. The inherent equitable power of the courts is in itself a demand that substantial justice be done. Therefore, pursuant to its equitable power the United States District Court for the Northern District of Texas adopted the Local Rule Concerning Bankruptcy Cases and Proceedings to achieve substantial justice. Pursuant to this Local Rule and, alternatively, pursuant to its inherent equitable powers, this Court referred *In re Braniff* to the bankruptcy judge.

In the courtroom of the United States Court of Appeals for the Fifth Circuit in Fort Worth, where this Court makes its attempt at dispensing substantial justice, one quote is inscribed in gold behind the bench of the Court:

REASON IS THE LIFE OF THE LAW
NAY, THE COMMON LAW ITSELF IS NOTHING
ELSE BUT REASON

If ever a case came before this Court commanding that Reason be sought and that Reason be applied to the ends of Justice — this is that case.

IV. *Referral of the Braniff Bankruptcy Proceeding to the Bankruptcy Judge*

The referral of the case involved in this dispute occurred immediately upon expiration of the Supreme Court's stay of *Marathon*.[12] Having determined the validity of the Local

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[11]*See* note 6 *supra*.
[12]*See* note 1 *supra*.

Rule adopted by the judges of the Northern District of Texas, it was not necessary to take any further action to have this case referred to the bankruptcy judge. Counsel for American Airlines, however, questioned the validity of the manner by which the judges adopted the Rule and the validity of the Rule's all-encompassing effect. In light of this challenge to the Rule, the Court chose to take additional action to protect the *Braniff* proceedings.

In re Braniff is an exceptional case,[13] and this Court determined that no effort should be spared in providing for a speedy and valid conclusion. Therefore, the Court withdrew the case, pursuant to the Local Rule,[14] found exceptional circumstances in this case, then referred the case to the Honorable E. John Flowers, Bankruptcy Judge for the Northern District of Texas, both under the provisions of the Local Rule and in the alternative, under the Court's equitable powers.[15] Judge Flowers is limited in his conduct of the case by provisions identical to those set forth in the Local Rule. Thus, any matter which could not constitutionally be decided by a non-Art. III judge, *see Marathon*, will not be decided by Judge Flowers.[16]

Continued validity of section 1471(a) and (b) would grant broad jurisdiction to the federal district court. Only matters that may be decided by a non-Art. III judge, however, were referred by the Court to the bankruptcy judge for final determination. This Court will make the final determination in all other matters. This action corrects the constitutional problem encountered in *Marathon*. If jurisdiction is based

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[13]*See In re Braniff*, Misc. No. 4-221-E, at 2 (N.D. Tex. Jan. 14, 1983).

[14]Were the Local Rule invalid, the case would have been properly in this Court. *See* I. *Supra*.

[15]*See* III. *supra*.

[16]Local Rule of the Northern District of Texas Concerning Bankruptcy Cases and Proceedings, Dec. 21, 1982, sec. (d)(3)(B).

solely on sections 1331, 1332 and 1334,[17] the jurisdiction of this Court would not be as broad as under section 1471. The reference to the bankruptcy judge would include at least "all matters and proceedings in bankruptcy." Any case "related to" the bankruptcy proceeding, although referred to the bankruptcy judge, will receive final determination in this Court, as clearly set forth in the limits on Judge Flowers' authority. *See In re Braniff*, Misc. No. 4-221-E, at 3 (N.D. Tex. Jan. 14, 1983); Local Rule, sec. (d)(3)(B).

It would be grossly unfair to all parties involved in bankruptcy matters if no Court exercised jurisdiction over these cases. Billions of dollars, as well as thousands of potential jobs may be lost, and the congressional intent to provide bankruptcy protection would be subverted, if all bankruptcies were abruptly halted. Clearly, Congress has not only shown its intent to create a two-tiered bankruptcy system, but also has provided the legislation by which this Court can allow the bankruptcy judge to exercise some of this Court's jurisdiction. In addition, equity demands, and makes provision for reference of cases in a posture similar to *Braniff*.

Judge Flowers has invested innumerable hours in reviewing the facts, circumstances and arguments in this case. To bring the case into the District Court now would mean the Court would start in the middle of the case without the benefit of Judge Flowers' admittedly unique expertise, obtained in the past eight months of *In re Braniff* proceedings. Although this Court could reserve the entire *In re Braniff* bankruptcy for its own determination, to do so would inevitably lead to some delay while the Court reviews the case

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[17]The automatic stay provision enacted by Congress, 11 U.S.C. § 3... still operates to halt most proceedings against debtors. Arguably, any suit to lift the stay is a federal question and cognizable under 28 U.S.C. § 1331.

merely to obtain the knowledge that Judge Flowers already possesses.[18]

Therefore, in order to protect the rights of creditors, stockholders, and all other parties who have depended on the bankruptcy laws' protection, and in order to provide speedy resolution of bankruptcy disputes, the Court has exercised its powers under congressional authority and under its inherent equitable power so that congressional intent may be implemented. This provision for bankruptcy cases (under the Local Rule) and for *Braniff* in particular (under the Local Rule and the inherent equitable powers of this Court) will allow orderly and final conclusion of all bankruptcy cases and proceedings.[19]

Signed this 20th day of January, 1983.

/s/ Eldon B. Mahon
UNITED STATES DISTRICT JUDGE

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[18]The excellent consideration of this case by Judge Flowers is reflected in the speedy and orderly manner in which the case has proceeded at all levels. That this matter came before the Court on a motion filed on January 11, 1983, which the Court heard on January 13 and disposed of by its Order of January 14 indicates that no undue delay has resulted from district court review of bankruptcy matters. Even *In re Braniff* — which certainly has a potential above the vast majority of bankruptcy matters to cause problems — has not been unduly delayed.

[19]During oral argument before this Court on Jan. 13, 1983, counsel for American Airlines also raised questions concerning the power of a bankruptcy court to make rulings affecting Civil Aeronautics Board proceedings. That issue was not addressed by counsel for American Airlines in the brief submitted to this Court, was not addressed by opposing counsel during oral argument, and is not addressed by this Court's opinion.

APPENDIX D.

Order of Certification.

In the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division.

In re: Braniff Airways, Incorporated, et al. Misc. BK 4-83-1-E.

Filed: January 21, 1983.

On January 15, 1983, the Honorable John Flowers, United States Bankruptcy Judge entered an "Order on Jurisdiction" and on January 18, 1983, Judge Flowers signed an order stating his opinion that the question determined by that Court in its "Order on Jurisdiction" was "one over which a question of controlling law exists as to which there are substantial grounds for differences of opinion and that an immediate appeal from the Order may materially advance the ultimate termination of the litigation." *See* "Order on Jurisdiction" page 4. Those Orders were filed in this Court on January 20, 1983, and this Court has reviewed said Orders pursuant to Local Rule (e)(3) of the Local Rule of the Northern District of Texas Concerning Bankruptcy Cases and Proceedings.

The Court has determined that the questions of law addressed in the "Order on Jurisdiction" signed by Judge Flowers, were foreclosed by the decision rendered by this Court in an Order on January 14, 1983, holding that the United States Supreme Court's decision in *Northern Pipeline Construction Company v. Marathon Pipe Line Co.*, 102 S.Ct. 2858 (1982) does not destroy the jurisdiction of the United States District Courts over bankruptcy cases and proceedings.

This Court's Order of January 14, 1983, also held the Local Rule of the Northern District of Texas Concerning Bankruptcy Cases and Proceedings to be constitutional and valid. Furthermore, on January 18, 1983, this Court signed an Order pursuant to 28 U.S.C. § 1292(b) stating that in

its opinion, its Order signed on January 14, 1983, involved a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the Order may materially advance the ultimate termination of the litigation. Then, on January 20, 1983, this Court entered its "Memorandum Opinion" giving a more detailed explanation of its conclusions in its Order of January 14, 1983.

The Court, pursuant to Local Rule (e)(3) of the Local Rules of the Northern District of Texas Concerning Bankruptcy Cases and Proceedings, now having reviewed the "Order on Jurisdiction" entered by the Bankruptcy Judge, hereby affirms that "Order on Jurisdiction" and concludes that the same question of law is involved in that "Order on Jurisdiction" which was involved in this Court's Order of January 14, 1983. Thus, this Court is of the opinion that the "Order on Jurisdiction" involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the Order may materially advance the ultimate termination of the litigation, and the Court hereby CERTIFIES this Order for Interlocutory Appeal pursuant to 28 U.S.C. § 1292(b).

Signed this 21st day of January, 1983.

/s/ Eldon B. Mahon
UNITED STATES DISTRICT JUDGE

APPENDIX E.

Order on Jurisdiction.

In the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division.

In re Braniff Airways, Incorporated, et al., Debtors.

In Proceedings for a Reorganization Under Chapter 11.

Case No. 482-00369.

This Court has received objections to its jurisdiction to consider some or all matters in the above-captioned proceedings including specifically the Debtor's request for an order (i) approving an Agreement dated December 22, 1982 between Debtor and Pacific Southwest Airlines; (ii) approving a proposed settlement and compromise of all claims by and among Debtor, the Committee of Unsecured Creditors and Unofficial Committee of Secured Creditors; (iii) authorizing Debtor to implement its obligations under the PSA Agreement; and (iv) making certain other findings and orders, all as specified in the Notice of Hearing Dated December 30, 1982. Each of the objections is to the effect that this Court lacks jurisdiction as a result of the Supreme Court's decision in *Northern Pipeline*.

Such objections have been filed by American Airlines; Continental Airlines; Delta Airlines; Northwest Airlines; Pan American World Airways; Muse Air; Southwest Airlines; United Airlines; Air Line Pilots Association; Association of Flight Attendants; International Association of Machinests; International Brotherhood of Teamsters, Airline Division; Dallas/Fort Worth Regional Airport Board; Aviall; International Air Transport Association; Committee of Unsecured Creditors; Secured Bondholders Committee; Chemical Bank as Indenture Trustee for 10% Notes; and U. S. Trust as Indenture Trustee for 9⅛% Debentures and The Bank of New York as Indenture Trustee for 5¾% Debentures.

This Court has considered the briefs and arguments of counsel for all listed parties, and has concluded that those arguments are foreclosed by the decision rendered by the United States District Court for the Northern District of Texas on January 14, 1983. That decision, which this Court concludes is the law of the case in these proceedings upheld the constitutionality of this Court's jurisdiction.

It is therefore ORDERED that the objections to jurisdiction based upon *Northern Pipeline* are hereby overruled.

/s/ John Flower
U. S. Bankruptcy Judge

Fort Worth, Texas
January 15, 1983

APPENDIX F.

Text of Constitutional Provisions, Statutes and Rules.

U.S. Const., art. III, § 1 provides:

> Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their continuance in Office.

Bankruptcy Reform Act of 1978, Pub. L. No. 95-598:

Section 238(a) provides: Section 1334 of title 28 of the United States Code is amended to read as follows:

> "§ 1334. Bankruptcy appeals
>
> "(a) The district courts for which panels have not been ordered appointed under section 160 of this title shall have jurisdiction of appeals from all final judgments, orders, and decrees of bankruptcy courts.
>
> "(b) The district courts for such districts shall have jurisdiction of appeals from interlocutory orders and decrees of bankruptcy courts, but only by leave of the district court to which the appeal is taken.
>
> "(c) A district court may not refer an appeal under that section to a magistrate or to a special master.".

(b) The table of sections of chapter 85 of title 28 of the United States Code is amended by striking out the item relating to section 1334 and inserting in lieu thereof the following:

> "1334. Bankruptcy appeals.".

Section 241(a) provides in relevant part:

Title 28 of the United States Code is amended by inserting immediately after chapter 89 the following:

§ 1471. *Jurisdiction*

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

(b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising in or related to cases under title 11.

(c) The bankruptcy court for the district in which a case under title 11 is commenced shall exercise all of the jurisdiction conferred by this section on the district courts.

Section 401 provides in relevant part:

Sec. 401(a). The Bankruptcy Act is repealed.

Section 404(a) provides in relevant part:

COURTS DURING TRANSITION

Sec. 404(a) The courts of bankruptcy, as defined under section 1(10) of the Bankruptcy Act, created under section 2a of the Bankruptcy Act, and existing on September 30, 1979, shall continue through March 31, 1984, to be the courts of bankruptcy for the purposes of this Act and the amendments made by this Act. Each of the courts of bankruptcy so continued shall constitute a separate department of the district court that is such court of bankruptcy under the Bankruptcy Act.

Section 405 provides:

(a)(1) All cases commenced under title 11 of the United States Code during the transition period shall be referred to the United States bankruptcy judges. The United States bankruptcy judges may exercise in such cases the jurisdiction and powers conferred by subsection (b) of this section on the courts of bankruptcy continued by section 404(a) of this Act, and all proceedings in such cases shall be before the United States bankruptcy judges, except —

(A) a proceeding to enjoin a court;

(B) a proceeding to punish a criminal contempt —

(i) not committed in the bankruptcy judge's actual presence; or

(ii) warranting a punishment of imprisonment; or

(C) an appeal from a judgment, order, decree, or decision of a United States bankruptcy judge.

(2) Except as provided in subsection (c) of this section, any proceeding in a court of bankruptcy in a case under title 11 of the United States Code that is not before the United States bankruptcy judge shall be before the judge of the court of bankruptcy for the district in which such case is pending.

(b) During the transition period, the amendments made by sections 241, 243, 250, and 252 of this Act shall apply to the courts of bankruptcy continued by section 404(a) of this Act the same as such amendments apply to the United States bankruptcy court established under section 201 of this Act.

(c)(1) During the transition period, an appeal from a judgment, order, or decree of a United States bankruptcy judge shall be—

(A) if the circuit council of the circuit in which the bankruptcy judge sits so orders for the district in which the bankruptcy judge sits, then to a panel of three bankruptcy judges appointed in the manner prescribed by section 160 of title 28 of the United States Code, as added by section 201 of this Act;

(B) if the parties to the appeal agree to a direct appeal to the court of appeals for such circuit, then to such court of appeals; or

(C) to the district court for the district in which the bankruptcy judge sits.

(2) During the transition period, the jurisdiction of the district courts, the courts of appeals, and panels of bankruptcy judges to hear appeals shall be the same as the jurisdiction of such courts and panels granted under the amendments made by sections 236, 237,

238, and 241 of this Act to hear appeals from the judgments, orders, and decrees of the bankruptcy courts established under section 201 of this Act.

(d) The rules prescribed under section 2075 of title 28 of the United States Code and in effect on September 30, 1979, shall apply to cases under title 11, to the extent not inconsistent with the amendments made by this Act, or with this Act, until such rules are repealed or superseded by rules prescribed and effective under such section, as amended by section 248 of this Act.

11 U.S.C. § 105, provides in relevant part:

The bankruptcy court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.

28 U.S.C. § 332(d) provides:

(1) Each judicial council shall make all necessary and appropriate orders for the effective and expeditious administration of justice within its circuit. Each council is authorized to hold hearings, to take sworn testimony, and to issue subpoenas and subpoenas duces tecum. Subpoenas and subpoenas duces tecum shall be issued by the clerk of the court of appeals, at the direction of the chief judge of the circuit or his designee and under the seal of the court, and shall be served in the manner provided in rule 45(c) of the Federal Rules of Civil Procedure for subpoenas and subpoenas duces tecum issued on behalf of the United States or an officer or agency thereof.

(2) All judicial officers and employees of the circuit shall promptly carry into effect all orders of the judicial council.

(3) Unless an impediment to the administration of justice is involved, regular business of the courts need not be referred to the council.

28 U.S.C. § 1331 provides:

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. § 1332 provides in relevant part:

> (a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and is between—
>
> (1) citizens of different States;
>
> (2) citizens of a State, and foreign states or citizens or subjects thereof; and
>
> (3) citizens of different States and in which foreign states or citizens or subjects thereof are additional parties.

28 U.S.C. § 1334 [referred to as old 28 U.S.C. § 1334], provides:

> The district courts shall have original jurisdiction exclusive of courts of the States, of all matters and proceedings in bankruptcy.

28 U.S.C. § 2071 provides:

> The Supreme Court and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business. Such rules shall be consistent with Acts of Congress and rules of practice and procedure prescribed by the Supreme Court. As amended May 24, 1949, c. 139, § 102, 63 Stat. 104.

Rule 17 of the Rules of the Supreme Court provides:

> .1. A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.
>
> (a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by

a lower court, as to call for an exercise of this Court's power of supervision.

(b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals.

(c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.

.2. The same general considerations outlined above will control in respect of petitions for writs of certiorari to review judgments of the Court of Claims, of the Court of Customs and Patent Appeals, and of any other court whose judgments are reviewable by law on writ of certiorari.

Rule 53 of the Federal Rules of Civil Procedure provides in relevant part:

(b) *Reference.* A reference to a master shall be the exception and not the rule. In actions to be tried by a jury, a reference shall be made only when the issues are complicated; in actions to be tried without a jury, save in matters of account and of difficult computation of damages, a reference shall be made only upon a showing that some exceptional condition requires it.

(e)(2) *In Non-Jury Actions.* In an action to be tried without a jury the court shall accept the master's findings of fact unless clearly erroneous. Within 10 days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties. Application to the court for action upon the report and upon objections thereto shall be by motion and upon notice as prescribed in Rule 6(d). The court after hearing may adopt the report or may modify it or may reject it in whole or in part or

may receive further evidence or may recommit it with instructions.

Rule 83 of Federal Rules of Civil Procedure provides in relevant part:

> Each district court by action of a majority of the judges thereof may from time to time make and amend rules governing its practice not inconsistent with these rules. Copies of rules and amendments so made by any district court shall upon their promulgation be furnished to the Supreme Court of the United States. In all cases not provided for by rule, the district courts may regulate their practice in any manner not inconsistent with these rules.

Rule 927 of the Rules of Bankruptcy Procedure provides:

> Each district court by action of a majority of the judges thereof may from time to time make and amend rules governing practice and procedure under the Act not inconsistent with these rules. Copies of rules and amendments so made shall upon their promulgation be furnished to the Administrative Office of the United States Courts. The clerk of each court shall make appropriate arrangements, subject to the approval of the Director of the Administrative Office of the United States Courts, for making copies of such rules available to members of the public who may request them. In all cases not provided for by rule, the district court may regulate its practice in any manner not inconsistent with these rules.

The Local Rule of the Northern District of Texas Concerning Bankruptcy Cases and Proceedings provides:

> In the United States District Court for the Northern District of Texas.
>
> (a) Emergency Resolution
>
> The purpose of this rule is to supplement existing law and rules in respect to the authority of the bankruptcy judges of this district to act in bankruptcy cases and proceedings until Congress enacts appropriate re-

medial legislation in response to the Supreme Court's decision in *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, ___ U.S. ___, 102 S. Ct. 2858 (1982), or until March 31, 1984, whichever first occurs.

The judges of the district court find that exceptional circumstances exist. These circumstances include: (1) the unanticipated unconstitutionality of the grant of power to bankruptcy judges in section 241(a) of Public Law 95-598; (2) the clear intent of Congress to refer bankruptcy matters to bankruptcy judges; (3) the specialized expertise necessary to the determination of bankruptcy matters; and (4) the administrative difficulty of the district courts' assuming the existing bankruptcy caseload on short notice.

Therefore, the orderly conduct of the business of the court requires this referral of bankruptcy cases to the bankruptcy judges.

(b) Filing of bankruptcy papers

The court of bankruptcy constituted by §404 of Public Law 95-598 shall continue to be known as the United States Bankruptcy Court of this district. The Clerk of the Bankruptcy Court is hereby designated to maintain all files in bankruptcy cases and adversary proceedings. All papers in cases or proceedings arising under or related to Title 11 shall be filed with the Clerk of the Bankruptcy Court regardless of whether the case or proceeding is before a bankruptcy judge or a judge of the district court, except that a judgment by the district judge shall be filed in accordance with Rule 921 of the Bankruptcy Rules.

(c) Reference to Bankruptcy Judges

(1) All cases under Title 11 and all civil proceedings arising under Title 11 or arising in or related to cases under Title 11 are referred to the bankruptcy judges of this district.

(2) The reference to a bankruptcy judge may be withdrawn by the district court at any time on its own

motion or on timely motion by a party. A motion for withdrawal of reference shall not stay any bankruptcy matter pending before a bankruptcy judge unless a specific stay is issued by the district court. If a reference is withdrawn, the district court may retain the entire matter, may refer part of the matter back to the bankruptcy judge, or may refer the entire matter back to the bankruptcy judge with instructions specifying the powers and functions that the bankruptcy judge may exercise. Any matter in which the reference is withdrawn shall be reassigned to a district judge in accordance with the court's usual system of assigning civil cases.

(3) Referred cases and proceedings may be transferred in whole or in part between bankruptcy judges within the district without approval of a district judge.

(d) Powers of Bankruptcy Judges

(1) The bankruptcy judges may perform in referred bankruptcy cases and proceedings all acts and duties necessary for the handling of those cases and proceedings except that the bankruptcy judges may not conduct:

(A) a proceeding to enjoin a court;

(B) a proceeding to punish a criminal contempt—

(i) not committed in the bankruptcy judge's actual presence; or

(ii) warranting a punishment of imprisonment;

(C) an appeal from a judgment, order, decree, or decision of a United States bankruptcy judge; or

(D) jury trials.

Those matters which may not be performed by a bankruptcy judge shall be transferred to a district judge.

(2) Except as provided in (d)(3), orders and judgments of bankruptcy judges shall be effective upon entry by the Clerk of the Bankruptcy Court, unless stayed by the bankruptcy judge or a district judge.

(3)(A) Related proceedings are those civil proceedings that, in the absence of a petition in bankruptcy, could have been brought in a district court or a state court. Related proceedings include, but are not limited to, claims brought by the estate against parties who have not filed claims against the estate. Related proceedings do not include: contested and uncontested matters concerning the administration of the estate; allowance of and objection to claims against the estate; courterclaims by the estate in whatever amount against persons filing claims against the estate; orders in respect to obtaining credit; orders to turn over property of the estate; proceedings to set aside preferences and fraudulent conveyances; proceedings in respect to lifting of the automatic stay; proceedings to determine dischargeability of particular debts; proceedings to object to the discharge; proceedings in respect to the confirmation of plans; orders approving the sale of property where not arising from proceedings resulting from claims brought by the estate against parties who have not filed claims against the estate; and similar matters. A proceeding is not a related proceeding merely because the outcome will be affected by state law.

(B) In related proceedings the bankruptcy judge may not enter a judgment or dispositive order, but shall submit findings, conclusions, and a proposed judgment or order to the district judge, unless the parties to the proceeding consent to entry of the judgment or order by the bankruptcy judge.

(e) District Court Review

(1) A notice of appeal from a final order or judgment or proposed order or judgment of a bankruptcy judge or an application for leave to appeal an interlocutory order of a bankruptcy judge, shall be filed within 10 days of the date of entry of the judgment or order or of the lodgment of the proposed judgment or order. As modified by sections (e) 2A and B of this rule, the procedures set forth in Part VIII of the Bank-

ruptcy Rules apply to appeals of bankruptcy judges' judgments and orders and the procedures set forth in Bankruptcy Interim Rule 8004 apply to applications for leave to appeal interlocutory orders of bankruptcy judges. Modification by the district judge or the bankruptcy judge of time for appeal is governed by Rule 802 of the Bankruptcy Rules.

(2)(A) A district judge shall review:

(i) an order or judgment entered under paragraph (d)(2) if a timely notice of appeal has been filed or if a timely application for leave to appeal has been granted;

(ii) an order or judgment entered under paragraph (d)(2) if the bankruptcy judge certifies that circumstances require that the order or judgment be approved by a district judge, whether or not the matter was controverted before the bankruptcy judge or any notice of appeal or application for leave to appeal was filed; and

(iii) a proposed order or judgment lodged under paragraph (d)(3), whether or not any notice of appeal or application for leave to appeal has been filed.

(B) In conducting review, the district judge may hold a hearing and may receive such evidence as appropriate and may accept, reject, or modify, in whole or in part, the order or judgment of the bankruptcy judge, and need give no deference to the findings of the bankruptcy judge. At the conclusion of the review, the district judge shall enter an appropriate order or judgment.

(3) When the bankruptcy judge certifies that circumstances require immediate review by a district judge of any matter subject to review under paragraph (e)(2), the district judge shall review the matter and enter an order or judgment as soon as possible.

(4) It shall be the burden of the parties to raise the issue of whether any proceeding is a related proceeding

prior to the time of the entry of the order or judgment of the district judge after review.

(f) Local Rules

In proceedings before a bankruptcy judge, the local rules of the bankruptcy court shall apply. In proceedings before a judge of the district court, the local rules of the district court shall apply.

(g) Bankruptcy Rules and Title IV of Public Law 95-598

Courts of bankruptcy and procedure in bankruptcy shall continue to be governed by Title IV of Public Law 95-598 as amended and by the bankruptcy rules prescribed by the Supreme Court of the United States pursuant to 28 U.S.C. § 2075 and limited by SEC [sic.] 405(d) of the Act, to the extent that such Title and Rules are not inconsistent with the holding of *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, ___ U.S. ___, 102 S. Ct. 2858 (1982).

(h) Effective Date and Pending Cases

This rule shall become effective December 25, 1982, and shall apply to all bankruptcy cases and proceedings not governed by the Bankruptcy Act of 1898 as amended, and filed on or after October 1, 1979. Any bankruptcy matters pending before a bankruptcy judge on December 25, 1982 shall be deemed referred to that judge.

This rule supersedes the previous rule of this court entered and filed on the 4th day of October, 1982, which prior rule is here canceled.

This order has been executed by the Chief Judge of the United States District Court for the Northern District of Texas after consent to the entry of the order was obtained from each district judge and a majority of the bankruptcy judges of the district.

ENTERED this the 21st day of December, 1982.

/s/ Halbert O. Woodward
HALBERT O. WOODWARD
Chief Judge
Northern District of Texas